

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JEREMY SCHUH,

Plaintiff,

v.

Case No. 08-10482

RODNEY POLLARD, WESLEY  
PRATER, DANIEL MINZEY, DAVID  
SCOTT SWARTZ, PATRICK BERGETT,  
RUSS CILIBRAISE, PATRICK A. HUGHES,  
SHEILA BLAKNEY, SERGEANT KUNATH,  
GINA JACOBS, LAURA M. GRAHAM,  
DIANNA COLLINS, and RIBITSCHUN,

HONORABLE AVERN COHN

Defendants.

---

**MEMORANDUM AND ORDER**  
**ADOPTING REPORT AND RECOMMENDATION**  
**AND**  
**GRANTING DEFENDANT COLLINS' MOTION TO DISMISS (Dkt. # 27)**  
**AND**  
**GRANTING DEFENDANTS RIBITSCHUM, POLLARD, CILIBRAISE AND HUGHES'**  
**MOTION TO DISMISS OR FOR SUMMARY JUDGMENT (Dkt. # 30)**  
**AND**  
**GRANTING DEFENDANTS BLAKNEY, KUNATH, JACOBS, GRAHAM, PRATER,**  
**MINZEY, AND SWARTZ'S MOTION TO DISMISS (Dkt. # 31)**  
**AND**  
**GRANTING DEFENDANT BERGETT'S MOTION FOR SUMMARY JUDGMENT**  
**(Dkt. # 54)**  
**AND**  
**DISMISSING CASE**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff is proceeding pro se and in forma pauperis. The complaint, which runs approximately 100 paragraphs and contains several exhibits, generally avers that defendants violated his constitutional

rights in connection with plaintiff being found guilty of a probation violation in 2004. The matter was referred to a magistrate judge for all pretrial proceedings and before whom defendants filed dispositive motions. The magistrate judge issued a report and recommendation (MJRR), recommending that all of defendants' motions be granted and the case dismissed. Before the Court are plaintiff's objections to the MJRR. For the reasons that follow, plaintiff's objections are overruled, the MJRR will be adopted, defendants' motions will be granted, and the case will be dismissed.

## II.

As noted above, the case concerns plaintiff being found guilty of a probation violation. Defendants, and their titles as described in the complaint, are:

Rodney Pollard - a probation agent

Wesley Prater - Washtenaw County Commissioner

Daniel Minzey - Sheriff of Washtenaw County

David Scott Swartz - Circuit Court Judge

Patrick Bergett - Probation Department Director

Russ Cilibraise - Administrative Assistant for Deputy Director Ribitschun

Patrick A. Hughes - Probation Administrator

Sheila Blakney - Senior Assistant Public Defender

Sergeant Kunath - Sergeant for Washtenaw County Sheriff's Department

Gina Jacobs - Assistant Public Defender

Laura M. Graham - Assistant Public Defender

Dianna Collins - Assistant Prosecuting Attorney for Washtenaw County

Deputy Director Ribitschun - Head of Field Operations Administration for MDOC

Defendant Collins filed a motion to dismiss arguing that she is entitled to absolute immunity, plaintiff has failed to state a claim, and his claims are barred by the statute of limitations. Defendants Ribitschum, Pollard, Cilibraise and Hughes filed a Motion to Dismiss or for Summary Judgment on the grounds that plaintiff has failed to state a claim, plaintiff is improperly challenging the validity of his imprisonment, his claims are time barred, the complaint fails to satisfy Rule 8, and defendants are entitled to various forms of immunity. Defendants Blakney, Kunath, Jacobs, Graham, Prater, Minzey, and Swartz filed a Motion to Dismiss on the grounds that plaintiff's claims are time barred, plaintiff fails to state a claim against Minzey, and defendants are entitled to immunity. Finally, defendant Bergett filed a Motion for Summary Judgment on the grounds that he was not involved in the matters alleged in the complaint because he was retired.

Plaintiff filed detailed responses to each motion.

The magistrate judge, in a thorough going analysis of all of defendants' arguments, recommends that the motions be granted. The magistrate judge specifically recommends the following:

(1) all of plaintiff's claims are barred by the applicable statute of limitations except for plaintiff's claims that Cilibraise violated plaintiff's constitutional rights on September 20, 2007, by refusing to take administrative action against Pollard and Hughes, Swartz violated plaintiff's constitutional rights on September 25, 2007, by denying plaintiff the right to attend a hearing on a motion for discovery, and Bergett violated plaintiff's constitutional rights by failing to respond to plaintiff's September 26, 2007 letter requesting that Bergett taken administrative action against Pollard and

Hughes; (2) Collins is entitled to prosecutorial immunity; (3) plaintiff's complaint satisfies the requirements of Fed. R. Civ. P. 8(a)(2); (4) Ribitschun and Cilibraise are entitled to Eleventh Amendment immunity with respect to the claims against them in their official capacities; (5) Swartz is entitled to judicial immunity; (6) Jacobs and Graham are not entitled to immunity because they are public defenders; (7) Pollard and Hughes are entitled to quasi-judicial immunity; (8) Cilibraise, Ribitschun, Minzey, and Blakney are entitled to qualified immunity; and (9) except for plaintiff's allegations against Pollard and Hughes arising from the issuance of the June 25, 2004 warrant, his claims are improperly challenging the fact or duration of his confinement.

### III.

Plaintiff has filed detailed objections to eight of the nine recommendations.<sup>1</sup> Defendants Swartz, Prater, Minzey, Kunath, Blakney, Jacobs, and Graham ("the Washtenaw County Defendants") filed a response to plaintiff's objections, to which plaintiff filed a reply. The Court has carefully reviewed the papers filed and the portions of the MJRR plaintiff finds objectionable de novo. Plaintiff's objections essentially present the same arguments considered and rejected by the magistrate judge. For all the reasons stated in the MJRR, and as further articulated in the response filed by the Washtenaw County Defendants, the Court agrees with the nine recommendations of the magistrate judge. Notably, the vast majority of plaintiff's claims are time barred and there is no basis for equitable tolling. As to the surviving claims, defendant Cilibraise is entitled to qualified immunity, defendant Swartz is entitled to judicial immunity, and there

---

<sup>1</sup>Plaintiff does not object to the recommendation that Jacobs and Graham, public defenders, are not entitled to immunity.

is no genuine issue of material fact that Bergett had retired prior to plaintiff sending him any letter.

Accordingly, the MJRR is ADOPTED as the findings and conclusions of the Court. Defendants' motions, noted above, are GRANTED. This case is DISMISSED.

SO ORDERED.

s/ Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: September 15, 2009

I hereby certify that a copy of the foregoing document was mailed to Jeremy Schuh 456902, Baraga Maximum Correctional Facility, 13924 Wadaga Rd, Baraga, MI 49908-9204 and the attorneys of record on this date, September 15, 2009, by electronic and/or ordinary mail.

s/ Julie Owens  
Case Manager, (313) 234-5160